

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Multimode, Inc. :
for Redetermination of a Deficiency or a Revision :
of a Determination or a Refund of Corporation :
Franchise Tax under Article 9A of the Tax Law for :
the Years f.y.e. 2/28/77. :
_____ :

AFFIDAVIT OF MAILING

State of New York
County of Albany

David Parchuck, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 20th day of May, 1983, he served the within notice of Decision by certified mail upon Multimode, Inc., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Multimode, Inc.
7 Norden Lane
Huntington Station, NY 11746

and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) under the exclusive care and custody of the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the petitioner herein and that the address set forth on said wrapper is the last known address of the petitioner.

Sworn to before me this
20th day of May, 1983.

David Parchuck

James P. DeGard

AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Multimode, Inc. :

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or a Revision :
of a Determination or a Refund of Corporation :
Franchise Tax under Article 9A of the Tax Law for :
the Years f.y.e. 2/28/77. :

State of New York
County of Albany

David Parchuck, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 20th day of May, 1983, he served the within notice of Decision by certified mail upon Mark A. Levine the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Mark A. Levine
Rich, Levine, Karpel & Co.
230 Park Ave.
New York, NY 10169

and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) under the exclusive care and custody of the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the representative of the petitioner herein and that the address set forth on said wrapper is the last known address of the representative of the petitioner.

Sworn to before me this
20th day of May, 1983.

David Parchuck

Commie R. Haglund

AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Multimode, Inc. :

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or a Revision :
of a Determination or a Refund of Corporation :
Franchise Tax under Article 9A of the Tax Law for :
the Years f.y.e. 2/28/77. :

State of New York
County of Albany

David Parchuck, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 20th day of May, 1983, he served the within notice of Decision by certified mail upon Robert Parks, the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Robert Parks
Mason & Company
75 Rockefeller Plaza
New York, NY 10017

and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) under the exclusive care and custody of the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the representative of the petitioner herein and that the address set forth on said wrapper is the last known address of the representative of the petitioner.

Sworn to before me this
20th day of May, 1983.

David Parchuck

Connie A. Hyslop

AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174

STATE OF NEW YORK
STATE TAX COMMISSION
ALBANY, NEW YORK 12227

May 20, 1983

Multimode, Inc.
7 Norden Lane
Huntington Station, NY 11746

Gentlemen:

Please take notice of the Decision of the State Tax Commission enclosed herewith.

You have now exhausted your right of review at the administrative level. Pursuant to section(s) 1090 of the Tax Law, any proceeding in court to review an adverse decision by the State Tax Commission can only be instituted under Article 78 of the Civil Practice Law and Rules, and must be commenced in the Supreme Court of the State of New York, Albany County, within 4 months from the date of this notice.

Inquiries concerning the computation of tax due or refund allowed in accordance with this decision may be addressed to:

NYS Dept. Taxation and Finance
Law Bureau - Litigation Unit
Building #9 State Campus
Albany, New York 12227
Phone # (518) 457-2070

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative
Mark A. Levine
Rich, Levine, Karpel & Co.
230 Park Ave.
New York, NY 10169
AND
Robert Parks
Mason & Company
75 Rockefeller Plaza
New York, NY 10017
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
MULTIMODE, INC.	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Franchise Tax on Business Corporations :	:	
under Article 9-A of the Tax Law for the Fiscal	:	
Year Ending February 28, 1977.	:	

Petitioner, Multimode, Inc., 7 Norden Lane, Huntington Station, New York 11746, filed a petition for redeterminaton of a deficiency or for refund of franchise tax on business corporations under Article 9-A of the Tax Law for the fiscal year ending February 28, 1977 (File No. 28129).

A formal hearing was held before Frank W. Barrie, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, on December 2, 1982 at 9:15 A.M. Petitioner appeared by Rich, Levine, Karpel & Co., CPA's (Mark A. Levine, CPA) and by Mason & Co., CPA's (Robert Parks, CPA). The Audit Division appeared by Paul B. Coburn, Esq. (James F. Morris, Esq., of counsel).

ISSUE

Whether the investment tax credit claimed by petitioner on the purchase of a computer was properly disallowed by the Audit Division.

FINDINGS OF FACT

1. Petitioner, Multimode, Inc., timely filed a corporation franchise tax report for the fiscal year ended February 28, 1977.

2. On April 7, 1978, the Audit Division issued a Statement of Audit Adjustment against petitioner showing an alleged tax deficiency of \$2,013.70 plus interest. The basis for the alleged deficiency was the disallowance by the Audit Division of the investment tax credit claimed by petitioner on its tax report for the fiscal year ended February 28, 1977. The Audit Division claimed that the computer on which petitioner based its investment tax credit was not "principally used by the taxpayer in the production of goods by manufacturing, mining, assembling, processing...".

3. On August 10, 1978, the Audit Division issued a Notice of Deficiency against petitioner showing an alleged tax deficiency of \$2,013.70 plus interest. The Statement of Audit Adjustment described in Finding of Fact "2", herein, was attached to the Notice of Deficiency.

4. The Audit Division conceded that the computer for which petitioner claimed an investment tax credit was depreciable pursuant to the I.R.C. §167, had a useful life of four years or more, was acquired by purchase as defined in I.R.C. §179(d) and was situated in New York State.

5. Petitioner was established in 1967 and during the year at issue employed approximately thirty persons. Its customers were predominantly firms that advertise via mail order catalogs.

6. Petitioner's customers provided names and addresses in the form of "hard copy", including order blanks and shipping invoices, which petitioner then made into a list in the form of a magnetic tape according to criteria such as income or geography. The names and addresses on the magnetic tape were then printed in any number of formats including mailing labels by utilizing a computer printer which was hooked into the computer.

7. Roger Abelson, petitioner's president, who was a credible witness, estimated that seventy percent of petitioner's business results in the printing of labels, while twenty percent ends at the point where the magnetic tape of names and addresses has been prepared. The remaining ten percent includes the computerization of raw data on magnetic tapes which are held for future use and "certain kinds of new reports that we might generate for the client." The utilization of the computer is an integral part of one hundred percent of petitioner's business.

CONCLUSIONS OF LAW

A. That pursuant to Tax Law §210.12(b), a corporation subject to taxation under Article 9-A of the Tax Law is entitled to an investment tax credit with respect to tangible personal property which is depreciable pursuant to I.R.C. §167, has a useful life of four years or longer, is acquired by purchase as defined in I.R.C. §179(d), has a situs in New York and is "principally used by the taxpayer in the production of goods by manufacturing, processing, assembling...". Pursuant to Findings of Fact "2" and "4", supra, the only issue to be resolved is whether the computer was "principally used by the taxpayer in the production of goods by manufacturing, processing, assembling...".

B. That processing is an operation whereby raw material is subjected to some special treatment, by artificial or natural means, which transforms or alters its form, state or condition. Matter of Continental Terminals, Inc., State Tax Commission, March 5, 1982.

C. That in the Matter of Epic Chemicals, Inc., State Tax Commission, October 30, 1981, this Commission held that the printing of personalization

upon promotional literature affects such a change in the literature as to constitute processing. Therefore, petitioner's printing activities may be said to constitute "processing".

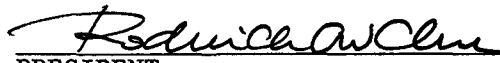
D. That the term "principally used" is defined in 20 NYCRR §5-2.4 to mean "more than 50 percent". Pursuant to Findings of Fact "6" and "7", supra, it may be concluded that the computer for which petitioner claimed an investment tax credit was "principally used" by petitioner in the production of goods by processing.

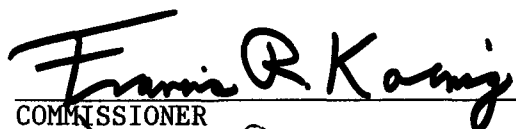
E. That the petition of Multimode, Inc. is granted and the Notice of Deficiency issued on August 10, 1978 is cancelled.

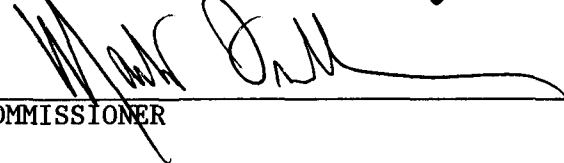
DATED: Albany, New York

MAY 20 1983

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER